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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION,

- and -

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric
Company
☒ Affects both Debtors

** All papers shall be filed in the Lead
Case, No. 19-30088 (DM).*

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11
(Lead Case)
(Jointly Administered)

**FOURTH OMNIBUS MOTION OF THE DEBTORS
PURSUANT TO 11 U.S.C § 365(a), FED. R. BANKR. P. 6006,
AND B.L.R. 6006-1 FOR AN ORDER (I) APPROVING
ASSUMPTION OF ENVIRONMENTAL AGREEMENTS AND
(II) GRANTING RELATED RELIEF (“ENVIRONMENTAL
AGREEMENTS ASSUMPTION MOTION”)**

Date: September 24, 2019
Time: 9:30am (Pacific Time)
Place: United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102
Judge: Hon. Dennis Montali

Objection Deadline: September 10, 2019, 4:00pm (Pacific Time)

NOTICE TO CONTRACT COUNTERPARTIES

A list of the Environmental Agreements (as defined below) is annexed hereto as Exhibit B. Counterparties receiving this motion should locate their respective Environmental Agreement(s) by their last name, as listed in Exhibit B.

PG&E Corporation and Pacific Gas and Electric Company, as debtors and debtors in possession (collectively, “**PG&E**” or the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby submit this Motion (this “**Motion**”), pursuant to section 365(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 6006-1 of the Bankruptcy Local Rules for the United States District Court for the Northern District of California (the “**Bankruptcy Local Rules**”), for an order (i) approving the Debtors’ assumption of agreements with four (4) counterparties thereto (collectively, the “**Owners**”) that provide the Debtors access to the Owners’ property to carry out environmental investigation and, in certain instances, land remediation and restoration obligations (collectively, and as amended from time to time, the “**Environmental Agreements**”) and (ii) granting related relief.

In support of the Motion, the Debtors submit the Declaration of Margaret A. Pietrasz (the “**Pietrasz Declaration**”), filed contemporaneously herewith. A proposed form of order granting the relief requested herein is annexed hereto as Exhibit A (the “**Proposed Order**”).

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. JURISDICTION**

3 The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334,
4 the *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24 (N.D.
5 Cal. Feb. 22, 2016), and Bankruptcy Local Rule 5011-1(a). This is a core proceeding pursuant to 28
6 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

7 **II. BACKGROUND**

8 On January 29, 2019 (the “**Petition Date**”), the Debtors commenced with the Court
9 voluntary cases under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their
10 businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108
11 of the Bankruptcy Code. No trustee or examiner has been appointed in either of the Chapter 11 Cases.
12 The Debtors’ Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to
13 Bankruptcy Rule 1015(b).

14 On February 12, 2019, the United States Trustee (the “**U.S. Trustee**”) appointed an
15 Official Committee of Unsecured Creditors (the “**Creditors Committee**”). On February 15, 2019, the
16 U.S. Trustee appointed an Official Committee of Tort Claimants (the “**Tort Claimants Committee**”
17 and, together with the Creditors Committee, the “**Committees**”).

18 Additional information regarding the circumstances leading to the commencement of the
19 Chapter 11 Cases and information regarding the Debtors’ businesses and capital structure is set forth in
20 the *Amended Declaration of Jason P. Wells in Support of First Day Motions and Related Relief* [Docket
21 No. 263] (the “**Wells Declaration**”).

22 As further described in the Wells Declaration, in connection with the first day relief
23 requested by the Debtors, the Debtors filed a motion seeking authority, but not direction, to maintain
24 certain of their customer programs, including certain environmental remediation programs that related
25 to the Environmental Agreements (the “**Customer Programs Motion**”). See Docket No. 16. On
26 February 20, 2019, the Owners filed an objection to the Customers Program Motion. See Docket
27 No. 527. In connection with the consensual resolution of the Objection, the Owners and the Debtors
28 agreed, among other things, to make a determination whether to assume or reject the Environmental

1 Agreements by an agreed upon date. *See* Customer Programs Motion Hearing Trans., 4:6 to 6:15 (Mar.
2 12, 2019). On March 12, 2019, the Debtors obtained final Court approval of the Customer Programs
3 Motion. *See* Docket No. 843.

4 **III. THE ENVIRONMENTAL AGREEMENTS¹**

5 The Environmental Agreements² collectively govern the terms by which the Debtors will
6 perform certain investigation, remediation, and restoration obligations relating to specific tracts of land
7 which the respective Owners own or on which they reside. Under the Environmental Agreements, the
8 Debtors' ongoing obligations generally include, among other things: (i) routine or discrete investigation
9 of the property for potential contaminants relating to prior utility facilities located on or near such
10 property; (ii) if contaminants associated with the former utility facilities are located on the property,
11 remediation activities to remove or otherwise remediate such contaminants from the property to reduce
12 the risk of possible future exposure to any such contaminants; and (iii) to the extent reasonably possible
13 following either investigation or remediation, the restoration of the Owners' property to its prior
14 condition before the investigation or remediation occurred (collectively, the "**Agreement Obligations**").
15 With oversight from the California Department of Toxic Substances Control (a division of the California
16 Environmental Protection Agency, the "**DTSC**"), the Debtors and their employees and contractors work
17 in close conjunction with the Owners to determine the most appropriate scope of and timing for the
18 Debtors' performance of the Agreement Obligations. The Environmental Agreements cover the period
19 of time required to complete the applicable Agreement Obligations, subject to mutually agreed
20 extensions of time as may be needed.

21 Each of the Owners owns property that may have been or was affected by potential
22 contaminants generated in the course of operations of former utility facilities located on or near such
23 property. The Debtors entered into the Environmental Agreements with the Owners in an effort to
24 determine whether such contaminants exist on the property, and if so, to remediate such property for the
25 benefit of the Owners and the surrounding environment. The Environmental Agreements are typically
26

27 ¹ The summaries of the Environmental Agreements contained herein are qualified in their entirety by the
28 terms of the underlying agreements, and in the event of any inconsistencies, the agreements govern.

² Copies of the Environmental Agreements will be provided, upon request, on a confidential basis to
counsel for the Committees and for the U.S. Trustee.

1 accompanied by either an attached general memorandum of understanding or other scope of work,
2 negotiated by the parties, whereby the respective Owner identifies specific investigation or remediation
3 and restoration activities.

4 As an example, certain of the Environmental Agreements relate solely to the investigation
5 of an Owner's land (such agreements, the "**Investigation Agreements**"). Under the Investigation
6 Agreements, the Debtors agree to take soil and soil vapor samples in different locations in an effort to
7 identify which, if any, chemicals associated with past utility operations are present. If chemicals in
8 sufficient quantities are determined to exist on the property, the Owner and the Debtors then agree to
9 specific remediation and restoration activities the Debtors must perform. These specifics are generally
10 set forth in a memorandum of understanding which ultimately is the basis of and attached to an agreement
11 relating to remediation and restoration activities (the "**Remediation Agreements**").

12 In connection with the Debtors' Agreement Obligations, the Debtors may lease an
13 Owner's property to facilitate its remediation and restoration obligations. The lease provides the Debtors
14 access and use of the land to appropriately remediate and restore the property in exchange for monetary
15 compensation to the Owner. In addition, in conjunction with entering into a Remediation Agreement,
16 the Debtors may also enter into a settlement and release agreement with the Owner, whereby the Owner
17 covenants not to pursue potential claims against the Debtors related to the presence, investigation, or
18 remediation of contaminants on their property associated with the former utility operations, so long as
19 the Debtors agree to remediate and restore such property in accordance with the terms set forth in the
20 applicable Remediation Agreement.

21 The Environmental Agreements allow the Debtors to continue their investigation and
22 remediation activities under the DTSC-approved remedial action plan and pursuant to its voluntary
23 cleanup agreement,³ and avoid litigation with home owners. Accordingly, the Debtors seek to assume
24 the Environmental Agreements set forth on **Exhibit B** attached hereto, which are made with the
25 following Owners: (i) Dennis Caselli; (ii) Sam and Catherine Dorrance; (iii) Laura Hart; and (iv) Minh
26

27 ³ Each such plan and agreement are available to view free of charge online at, respectively:
28 https://www.envirostor.dtsc.ca.gov/public/final_documents2?global_id=60001254&doc_id=60254392
and https://www.envirostor.dtsc.ca.gov/public/final_documents2?global_id=60001254&enforcement_id=60188784.

1 and Gurdon Merchant. Each agreement listed on **Exhibit B** includes the names of the applicable
2 Owners, the title of the Environmental Agreement, the date of execution, and any prepetition Agreement
3 Obligations owed to the applicable Owner that must be satisfied or cured for the Debtors to assume such
4 agreement. Each of the Owners have consented to the assumption of their respective Environmental
5 Agreements by the applicable Debtors and the proposed cure amounts for each such agreement as set
6 forth in **Exhibit B**.

7 **IV. ASSUMPTION OF THE ENVIRONMENTAL AGREEMENTS IS IN THE BEST**
8 **INTERESTS OF THE DEBTORS, THEIR CREDITORS, AND ALL PARTIES IN**
9 **INTEREST**

10 The Debtors' assumption of the Environmental Agreements should be approved under
11 section 365(a) of the Bankruptcy Code. Section 365(a) of the Bankruptcy Code provides, in pertinent
12 part, that a debtor in possession "subject to the court's approval, may assume or reject any executory
13 contract . . . of the debtor." 11 U.S.C. § 365(a).

14 The Supreme Court has defined "executory contracts" as contracts "on which
15 performance is due to some extent on both sides." *NLRB v Bildisco & Bildisco*, 465 U.S. 513, 522 n.6
16 (1984). The Ninth Circuit has similarly described executory contracts as contracts where "one party's
17 failure to perform its obligation would excuse the other party's performance." *Zurich Am. Ins. Co. v.*
18 *Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.)*, 503 F.3d 933, 941 (9th Cir. 2007) (citing *Commercial*
19 *Union Ins. Co. v. Texscan Corp. (In re Texscan Corp.)*, 976 F.2d 1269, 1272 (9th Cir. 1992)). The
20 Environmental Agreements clearly fall within this definition. In each case, there remains material
21 performance obligations due from both the Debtors and the Owners. Unlike in *International Fibercom*
22 or *Texscan*, there is no statutory or contractual basis to require performance by the Owners
23 notwithstanding the Debtors' entry into the Chapter 11 Cases if the Debtors do not perform their
24 obligations.

25 Bankruptcy Courts generally "approve motions to assume, assume and assign, or reject
26 executory contracts or unexpired leases upon a showing that the debtor's decision to take such action
27 will benefit the debtor's estate and is an exercise of sound business judgment." *In re MF Glob. Holdings*
28 *Ltd.*, 466 B.R. 239, 242 (Bankr. S.D.N.Y. 2012); *see also Durkin v. Benedor Corp. (In re G.I. Indus.,*
Inc.), 204 F.3d 1276, 1282 (9th Cir. 2000); *In re Miller*, No. 15-61159-12, 2016 WL 1316763, at *4

(Bankr. D. Mont. Apr. 1, 2016).

The “business judgment” standard is not a strict standard; it requires only a showing that either assumption or rejection of the executory contract will benefit the debtor’s estate. *See Bakery, Confectionary & Tobacco Workers Int’l Union v. Kirkpatrick (In re Kirkpatrick)*, 34 B.R. 767, 769 (B.A.P. 9th Cir. 1983); *Pac. Shores Dev., LLC v. At Home Corp. (In re At Home Corp.)*, 292 B.R. 195, 199 (N.D. Cal. 2003), *aff’d*, 392 F.3d 1064 (9th Cir. 2004); *In re Am. Suzuki Motor Corp.*, 494 B.R. 466, 476 (Bankr. C.D. Cal. 2013). Furthermore, “[c]ourts generally will not second-guess a debtor’s business judgment concerning whether the assumption or rejection of an executory contract or unexpired lease would benefit the debtor’s estate.” *In re MF Glob. Holdings Ltd.*, 466 B.R. at 242; *In re Miller*, 2016 WL 1316763, at *4 (“Although . . . business judgment is the proper standard for determining whether to permit assumption or rejection of an executory contract or unexpired lease, the court should focus on the business judgment of the trustee or debtor in possession, not on its own business judgment.”). The Court should “presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate.” *Agarwal v. Pomona Valley Med. Grp., Inc. (In re Pomona Valley Med. Grp., Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (in the context of a motion to reject under section 365(a)). Only a decision which is “so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice” runs afoul of the rule. *Id.*

As outlined above and in the Pietrasz Declaration, the Debtors have determined to assume the Environmental Agreements. *See* Pietrasz Declaration ¶ 9. Under applicable California law, the Debtors generally must ensure that they investigate and remediate the properties covered by the Environmental Agreements. *Id.*; *see generally* Cal. Health & Safety Code § 25300 *et seq.* The Debtors’ failure to investigate or remediate the properties covered by the Environmental Agreements may expose the Debtors to potential liability and costly litigation. *See* Pietrasz Declaration ¶ 9. To avoid the uncertainty associated with the potential liability and litigation costs, and to assert orderly control over the investigation process, the Debtors took affirmative steps before the Petition Date to enter into the Environmental Agreements and perform their Agreement Obligations, which they have continued to perform on a post-petition basis. *Id.* Performance under the Environmental Agreements has served to

1 reduce the Debtors' environmental cleanup obligations to foreseeable expectations, a benefit that the
2 Debtors believe should be preserved through the relief sought in this Motion. *Id.*

3 The Debtors agreed with the DTSC to act in accordance with an approved remedial action
4 plan. *Id.* ¶ 10. The remedial action plan was formally reviewed and approved by the DTSC and set forth
5 the public plans by which the Debtors, with oversight from the DTSC, will investigate and remediate
6 certain properties, including specifically those covered by the Environmental Agreements. *Id.*
7 Continued performance under the Environmental Agreements permits the Debtors to comply with the
8 Debtors' obligations to the DTSC. *Id.* Indeed, for similar reasons, the Debtors sought and received the
9 relief in the Customer Programs Motion to continue funding amounts in respect of their environmental
10 cleanup responsibilities. *Id.* Among other things, that relief was intended to ensure compliance with
11 California law and to permit the Debtors to continue working with the DTSC and other agencies on
12 various environmental matters. *Id.*

13 When assuming an executory contract, section 365(b) of the Bankruptcy Code requires
14 the debtor to cure any defaults under the contract or provide adequate assurance that it will promptly
15 cure these defaults. *See* 11 U.S.C. § 365(b)(1)(A); *see also In re Crummie*, 194 B.R. 230, 237 (Bankr.
16 N.D. Cal. 1996); *In re Heitman*, No. 99-20559, 1999 WL 33486720, at *1 (Bankr. D. Idaho July 22,
17 1999) ("Additionally, § 365(a) and (b) require Court approval of assumption, and only then upon proof
18 of satisfaction of certain prerequisites regarding cure of defaults and adequate assurance of future
19 performance."). The Debtors believe that there are no existing defaults under the Environmental
20 Agreements and, therefore, no outstanding cure obligations owed under the Environmental Agreements.
21 In addition, following entry of an order granting the relief requested in this Motion, to the extent there
22 are disputes under the Environmental Agreements, including those unresolved at the time of this Motion,
23 the Owners and the Debtors reserve their rights to identify and resolve such disputes in the ordinary
24 course of business in accordance with the terms of the Environmental Agreements, and nothing in this
25 Motion or an order granting the relief requested herein shall prejudice the Debtors' or the Owners' rights
26 regarding such disputes.

27 Accordingly, the Debtors believe the relief requested in this Motion should be approved
28 as a sound exercise of the Debtors' business judgment, and is in the best interest of their estates, creditors,

shareholders, and all other parties in interest.

V. REQUEST FOR BANKRUPTCY RULE 6006 AUTHORIZATION

A. Rule 6006(e) Authorization

The Debtors request authorization pursuant to Bankruptcy Rule 6006(e) to file this Motion as an omnibus motion to assume the Environmental Agreements. As outlined above, (i) the Owners are all represented by the same counsel, Stuart G. Gross, and (ii) the Environmental Agreements each relate to the performance of similar or related Agreement Obligations. Accordingly, the Debtors believe there is ample cause for an order permitting this Motion to be heard as an omnibus motion to avoid the Debtors' estates bearing the cost of multiple, near-identical motions to assume the Environmental Agreements. There is no detriment to any party in interest in having the Motion heard as an omnibus motion.

B. Rule 6006(f) Compliance

Under Bankruptcy Rule 6006(f), the Debtors may join requests for authority to assume multiple executory contracts in one motion if the authorization requested under Bankruptcy Rule 6006(e) is granted. Bankruptcy Rule 6006(f) provides that a motion to assume (or reject) multiple executory contracts or unexpired leases that are not between the same parties shall:

- (1) state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion;
- (2) list parties alphabetically and identify the corresponding contract or lease;
- (3) specify the terms, including the curing of defaults, for each requested assumption or assignment;
- (4) specify the terms, including the identity of each assignee and the adequate assurance of future performance by each assignee, for each requested assignment;
- (5) be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and
- (6) be limited to no more than 100 executory contracts or unexpired leases.

As described herein, this Motion and notice thereof (i) clearly and conspicuously direct the Owners to the list of Environmental Agreements in **Exhibit B** and provide sufficient information in alphabetical

1 order to determine whether their agreements are covered by this Motion, (ii) specify the cure amounts
2 owed, if any, and (iii) constitute the fourth omnibus motion filed in the Chapter 11 Cases, therefore
3 satisfying the requirements of Bankruptcy Rule 6006(f).

4 For the reasons outlined above, the Debtors respectfully submit that their compliance with
5 the requirements of Bankruptcy Rule 6006(f) as described herein is appropriate, satisfies due process,
6 and should be approved as good and sufficient.

7 **VI. NOTICE**

8 Notice of this Motion will be provided to (i) the Office of the United States Trustee for
9 Region 17 (Attn: Andrew Vara, Esq. and Timothy Laffredi, Esq.); (ii) counsel to the Creditors
10 Committee; (iii) counsel to the Tort Claimants Committee; (iv) the Securities and Exchange
11 Commission; (v) the Internal Revenue Service; (vi) the Office of the California Attorney General;
12 (vii) the California Public Utilities Commission; (viii) the Nuclear Regulatory Commission; (ix) the
13 Federal Energy Regulatory Commission; (x) the Office of the United States Attorney for the Northern
14 District of California; (xi) counsel for the agent under the Debtors' debtor in possession financing
15 facility; (xii) each Owner; (xiii) Stuart G. Gross, as counsel to the Owners; and (xiv) those persons who
16 have formally appeared in these Chapter 11 Cases and requested service pursuant to Bankruptcy Rule
17 2002. The Debtors respectfully submit that no further notice is required.

18 The Debtors have previously sought relief from this Court to assume other executory
19 contracts. No previous request for the relief sought herein in respect to the Environmental Agreements
20 has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request entry of the Proposed Order granting (i) the relief requested herein as a sound exercise of the Debtors' business judgment and in the best interests of their estates, creditors, shareholders, and all other parties in interest, and (ii) such other and further relief as the Court may deem just and appropriate.

Dated: August 16, 2019

WEIL, GOTSHAL & MANGES LLP

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By: /s/ Jessica Liou
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and Debtors in Possession*